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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/803,665	03/18/2004	John G. Joseph	SHO 005 P2	6008
34232	7590	07/01/2005	EXAMINER	
MATTHEW R. JENKINS, ESQ. 2310 FAR HILLS BUILDING DAYTON, OH 45419			ARYANPOUR, MITRA	
			ART UNIT	PAPER NUMBER
			3711	

DATE MAILED: 07/01/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 10/803,665	Applicant(s) JOSEPH, JOHN G.	
	Examiner Mitra Aryanpour	Art Unit 3711	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 18 March 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-34 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-34 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 18 March 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>30 August 2004</u> . | 6) <input type="checkbox"/> Other: _____  |

**DETAILED ACTION*****Drawings***

1. The drawings are objected to under 37 CFR 1.83(a) because they fail to show bolt 192; nut 190; trajectory adjuster 160; visual ball-size gauge 146; and L-shaped spring support 150 as described in the specification. Any structural detail that is essential for a proper understanding of the disclosed invention should be shown in the drawing. MPEP § 608.02(d). Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as “amended.” If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either “Replacement Sheet” or “New Sheet” pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

2. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference character “90” has been used to designate both retainer and throw back unit; reference character “92” has been used to designate both aperture and track; reference character “92” has

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been used to designate both grate and track; reference character “18” has been used to designate both throwback unit and cage; and reference character “144” has been used to designate both threaded lock nut and hand nut. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either “Replacement Sheet” or “New Sheet” pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### *Specification*

3. The use of the trademark VELCRO and PLEXIGLAS has been noted in this application. It should be capitalized wherever it appears and be accompanied by the generic terminology. Although the use of trademarks is permissible in patent applications, the proprietary nature of the marks should be respected and every effort made to prevent their use in any manner which might adversely affect their validity as trademarks.

4. The disclosure is objected to because of the following informalities: no clear meaning can be derived from paragraph [0036]. As best understood and seen in the drawings support member 42 is not coupled to the members 38 and 40 with brackets 44 and 48. Did applicant mean members 32 and 34?; in paragraph 42 line 7, there is no Fig 26; in paragraph [0047] lines 2 and 4 “adjuster 114” should be changed to “first adjuster 114”; in paragraph [0053] line 3, “gauge meter 142” should be changed to “second gauge meter 142”; in paragraph [00061] line 8, “is”

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should be inserted before “envisioned”; and in paragraph [0051] line 14, it appears that “gauge members 138 and 140” should be changed to “gauge members 140 and 142”. Appropriate correction is required for the above objections.

***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1-12, 16-30, 32-34 are rejected under 35 U.S.C. 102(b) as being anticipated by Brazzell (6,406,386).

Regarding claim 1, Brazzell discloses a target (the surface on the playing table), a collector (a ball scoop or trough 21) and a throwback unit (dispensing outlet 13), wherein the throwback unit comprising a base, a drive motor, a wheel and a guide (see column 3, lines 47-64; see figures 2 and 3). The preamble, a baseball training system, does not limit the structure of the claimed device because the portion of the claim following the preamble is a self-contained description of the structure and does not depend on the preamble for completeness.

Regarding claims 2-4, Brazzell further shows system allows for balls to be thrown at different trajectories and rates. Additionally the system provides for the adjustment of the ball size (see column 3, lines 47-67), wherein a pair of slide arms (31) is moved to in order to accommodate different size balls (see column 4, lines 3-18).

Regarding claim 5, Brazzell shows a guide adjuster (ball serving wheel 25) for selecting various rates and trajectories.

Regarding claim 6, Brazzell shows a motor mount on which the drive motor is mounted (it should be noted that although the figures do not show the actual motor, but that it is understood that the motor is mounted and supported within the housing).

Regarding claim 7, note the rejection of claim 6.

Regarding claim 8, Brazzell shows a rotatable crank (the broadest reasonable interpretation of *rotatable crank* would include ball feeding arms which are rotatably mounted to the enclosure) for raising and lower the wheel of the guide.

Regarding claim 9, Brazzell shows a pair of slide elements (31) having an undulating outer contour (33) to enable the player to move the slide elements (31) between two ball sizes, therefore acting as a preset gauge.

Regarding claim 10, Brazzell further shows the ball adjuster comprises a preset gauge (the broadest reasonable interpretation of *an indicator* would include the camming finger 39).

Regarding claim 11, Brazzell shows the throwback unit comprises a track (ball passageway 5) for guiding balls towards the wheel, the collector (ball scoop or trough 21) comprising a floor that is angled relative to the ground (see figure 1).

Regarding claim 12, Brazzell shows the throwback unit is portable and detachable from the collector (see figures 8-10).

Regarding claims 16 and 17, Brazzell shows that not only can the trajectory and size of the balls be changed but also the rate at which the ball is served can also be adjusted.

Regarding claim 18, note the rejection of claim 1 in part.

Regarding claim 19, note the rejection of claim 2.

Regarding claim 20, note the rejection of claim 3.

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Regarding claim 21, note the rejection of claim 4.

Regarding claim 22, note the rejection of claim 5.

Regarding claim 23, note the rejection of claim 6.

Regarding claim 24, note the rejection of claim 6.

Regarding claim 25, note the rejection of claim 8.

Regarding claim 26, note the rejection of claim 9.

Regarding claim 27, note the rejection of claim 10.

Regarding claim 28, note the rejection of claim 10.

Regarding claim 29, note the rejection of claim 11 in part.

Regarding claim 30, note the rejection of claim 13.

Regarding claims 32-34, during normal use and operation of the Brazzell device, the method steps set forth by applicant in the claim is inherently provided. Note the rejection of claims 1-12.

***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 13-15, 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brazzell (6,406,386).

Regarding claims 13 and 14, Brazzell shows the device removably attachable and transportable. Brazzell provides a horizontal support arm (9) for attaching the device to a table.

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Brazzell does not disclose expressly the device having a wheel or a handle to aid in transporting the device. At the time the invention was made, it would have been an obvious matter of design choice to a person of ordinary skill in the art to include a wheel and/or a handle on a training device, because Applicant has not disclosed that including a wheel and/or a handle, provides an advantage, is used for a particular purpose, or solves a stated problem. One of ordinary skill in the art, furthermore, would have expected Applicant's invention to perform equally well with either the training device taught by Brazzell or the claimed training device because both training device perform the same function of automatically serving different size balls at various rates, trajectories. Therefore, it would have been an obvious matter of design choice to modify Brazzell to obtain the invention as specified in claims 13-15 and 31.

Regarding claim 15, note the rejection of claim 14.

Regarding claim 31, note the rejection of claim 15.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mitra Aryanpour whose telephone number is 571-272-4405. The examiner can normally be reached on Monday - Friday 10:00 to 6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Greg Vidovich can be reached on 571-272-4415. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.



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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

MA  
23 June 2005



**MITRA ARYANPOUR**  
**PRIMARY EXAMINER**